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4                   UNITED STATES DISTRICT COURT  
5                   WESTERN DISTRICT OF WASHINGTON  
6                   AT TACOMA

7                   TODD and KAREN BRANDT,  
8  
9

10                  Plaintiffs,

CASE NO. C08-5760BHS

11                 v.  
12

13                   AMERICAN BANKERS INSURANCE  
14                   COMPANY OF FLORIDA,

DECISION

15                  Defendant.

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16                   I. SUMMARY OF DECISION

17                  Todd and Karen Brandt (the “Brandts”) bring this action to recover a judgment for  
18 amounts they allege are owed under their flood insurance policy, which they purchased  
19 from American Bankers Insurance (“AB”). The loss amounts they claim were the result  
20 of damages the Brandts suffered when flood waters of the Skookumchuck River poured  
21 into their property and residence in December 2007.

22                  Although coverage was generally not in dispute and AB paid for damages that it  
23 concluded were the proximate result of the flood, it did not pay the full amount the  
24 Brandts alleged to be due them under the policy.

25                  The Court held a two-and-one-half-day trial (June 8-10, 2010) in which evidence  
26 was presented by the Brandts and AB. The central, but not only, factual issues involved  
27 the questions of whether or not the house shifted on the foundation as a result of the 2007  
28 flood and whether the house, apart from the attached garage, suffered any damage that  
required repair for which AB was required under the policy to compensate the Brandts.

1       The Court concludes that no further moneys are due under the policy and finds for  
2 AB. This result is not an entirely equitable result, but the Court heard this case in law and  
3 not in equity. It is unfortunate that the Brandts were partially, though unintentionally,  
4 misled when AB initially determined that the flood did cause some misalignment of the  
5 house on its foundation and had proposed to pay an amount to correct that damage. Only  
6 after litigation commenced did AB obtain a better engineering analysis on the question of  
7 whether the flood caused the house to shift on its foundation.

8       Because of the inaccurate conclusion reached by AB's first retained engineer,  
9 decisions were, in part, made by the Brandts to proceed on a course that lead to their  
10 moving out of their home and seeking the opinions of others, resulting in their conclusion  
11 that the house was in need of a new foundation and substantial further repairs to bring  
12 their house into a habitable and pre-flood condition.  
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## 14                   **II. DISCUSSION**

15       On June 30, 2007, the Brandts for the price of \$260,000.00 purchased a four-  
16 bedroom rambler-style house for themselves and their 12 children (consisting of their  
17 own children and grandchildren), located along the Skookumchuck River in Centralia,  
18 Washington. Four months later the river overran its banks and entered the garage that,  
19 though it was attached, was situated at an elevation about eighteen inches below the floor  
20 level of the main house. Water also entered the crawl space which is walled in by the  
21 house foundation.

22       In dispute at the trial was the extent to which the non-garage portion of the house  
23 was affected by the flood waters. While there was a great deal of circumstantial evidence  
24 that the water never reached above the beams and stringers supporting the car decking  
25 that constituted the underlayment to the floor of the house, Todd and Karen Brandt, as  
26 eyewitnesses, saw water lapping up on the exterior siding above the floor level and  
27 observed wet carpet following the flood. There was no testimony that standing water was  
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1 seen in the non-garage portion of the house during or after the flood. Indeed, Karen  
2 Brandt expressed relief that it had not. The Court finds that it is likely that the flood level  
3 did not rise enough to produce water on the floor of the non-garage portion of the house,  
4 but that it is also likely that water sloshed around in the crawl space sufficiently to cause  
5 some parts of the car decking to become wet and conceivably saturated in places. This, in  
6 turn, could have caused the floor coverings to be wet in places, but there was insufficient  
7 evidence to conclude that there was water throughout the house on or in the floor  
8 coverings.

9       Although there was moisture found in the carpet and a high moisture content  
10 measured in the car decking months after the flood had subsided, that did not likely result  
11 from the December 2007 flood. There was ample time for that moisture to dissipate. More  
12 likely, it is the result of a combination of factors. These factors include the moisture from  
13 the dirt floor within the foundation resulting from the removal of moisture (or vapor)  
14 barrier after the flood and the lack of any subfloor insulation which customarily provides  
15 an additional moisture barrier. Another source of moisture was likely the roof leaks and  
16 an inadequate gutter-to-eave installation. An interior plumbing leak in the master  
17 bedroom bathroom could also have been a contributing factor.

18       The Court finds that the house did not move on its foundation as a result of the  
19 flood. Moreover, it is unlikely that the flood caused any of the anomalies discovered in  
20 the house by the Brandts following the flood or as observed by other expert witnesses.  
21 The testimony of Edwin Huston, a structural engineer, was compelling in support of his  
22 conclusion that the house was unmoved by the flood waters. This conclusion is based on a  
23 combination of (1) evidence of paint which was applied before the flood that was  
24 continuous and uninterrupted over the surface where the siding and foundation interface;  
25 (2) the lack of any evidence of movement of trim adjacent to the sliding door of the  
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1 bedroom; and (3) the lack of any evidence of movement of the post supporting the house  
2 floor and steel plates affixed to the post.

3 Additionally, Mr. Huston demonstrated that the leaning columns which had been  
4 painted before the flood showed no sign of movement either at the top or bottom.  
5 Moreover, it is clear that the house had experienced at least one other significant flood  
6 event, as well as the Nisqually earthquake, which could have caused the observed  
7 anomalies in the columns and siding. In fact, there was no explanation offered for the  
8 removal and replacement of the bottom nine inches of siding other than a prior flood  
9 event. Another plausible and perhaps more likely theory is that some of these anomalies  
10 are actually traceable to the original construction of the house.

11 One of the somewhat perplexing aspects of the evidence produced at trial was the  
12 observed post-flood presence of cracks in the interior walls of the house. Karen Brandt  
13 noticed several wall cracks after the flood. Some cracks were also observed by Scott  
14 Cook, a home inspector, although he was not familiar with the house prior to the flood  
15 and could not offer testimony as to its pre-flood condition. Mr. Huston offered the  
16 explanation that interior cracks on walls are the common result of shrinkage and settling.  
17 This testimony, however, does not address the observations of Karen Brandt that these  
18 cracks had not been seen before the flood. The Court finds that Karen Brandt testified  
19 from her best recollection, but concludes that the cracking of interior walls preceded the  
20 flood. Her inspection or powers of observation of the wall condition, like the leaning  
21 columns and the exterior wall, may have been more keen after the flood event than before  
22 – a perfectly natural and common phenomenon. It is the weight of the other physical  
23 evidence previously discussed that leads the Court to its conclusion on this issue as well.  
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25 Because the Court finds that there was no damage to the interior of the house  
26 resulting from the flood that needed repair, the issue relating to the requirement of the  
27 building code of the City of Centralia that the house be raised is moot. Such a raising  
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1 requirement is only applicable if the house had suffered damage amounting to more than  
2 50% of its value. Clearly, the cost of the damage to the garage, which was determined to  
3 be \$37,715.92 and has already been paid, does not begin to approach one-half the value of  
4 the house.

5 AB raised the uncontested defense that no further compensation is required under  
6 the policy of insurance because the Brandts cannot recover replacement costs after the  
7 time in which the repairs needed to be made under the terms of that coverage has expired.  
8 Therefore, the only other potentially available coverage under the policy is the payment  
9 of actual cash value (which is defined in the policy as replacement costs less  
10 depreciation). Because no evidence was offered as to depreciation, AB argues that no  
11 further payments under the policy are payable.

12 Since the Court has determined that there was no damage to the house proximately  
13 caused by the 2007 flood, that has not already been paid for by AB, this issue is moot.  
14

### III. CONCLUSION

15 AB did not breach its contract of insurance with the Brandts and therefore no  
16 money is due them.  
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18 AB is instructed to submit proposed findings of fact and conclusions of law  
19 consistent with this decision on or before June 30, 2010. The Brandts may file their  
20 objections and proposed findings of fact and conclusions of law consistent with this  
21 decision on or before July 9, 2010.

22 DATED this 21<sup>st</sup> day of June, 2010.

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26 BENJAMIN H. SETTLE  
27 United States District Judge  
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